

**Restructuring and Reform Act of 1998
Section 1203 Allegations Were
Properly Controlled**

September 2004

Reference Number: 2004-40-176

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

INSPECTOR GENERAL
for TAX
ADMINISTRATION

September 22, 2004

MEMORANDUM FOR CHIEF HUMAN CAPITAL OFFICER

Gordon C. Milbourn III

FROM: Gordon C. Milbourn III
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report - Restructuring and Reform Act of 1998
Section 1203 Allegations Were Properly Controlled
(Audit # 200440040)

This report presents the results of our review of Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98)¹ Section (§) 1203 allegations. The overall objective of this review was to determine whether the IRS process ensured § 1203 allegations referred for action and management responses were accounted for and addressed. The RRA 98 added Title 26 United States Code § 7803 (d)(1)(A), requiring the Treasury Inspector General for Tax Administration (TIGTA) to annually report to the Congress any terminations or mitigations under RRA 98 § 1203.

In summary, the IRS process ensured § 1203 allegations referred for action and management responses were accounted for and addressed. The IRS properly controlled 33 referred allegations and 51 reports of investigation forwarded from the TIGTA Office of Investigations and 1,302 referrals from the Employee Tax Compliance (ETC) Branch in the IRS systems. In addition, the IRS and the § 1203 Review Board adequately controlled 141 cases forwarded to the § 1203 Review Board for final determination during the 15-month period ending March 31, 2004. The 141 cases were identified from IRS records and traced to the § 1203 Review Board records to establish that all substantiated § 1203 cases were addressed.

While reviewing ETC case processing, we identified 198 cases as of March 31, 2004, that were open for over 180 calendar days without a resolution as to whether the tax compliance issue was a substantiated § 1203 violation. Labor Relations offices did perform informal monthly reviews of cases over 180 calendar days old. However, Labor

¹ Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

Relations Specialists did not document their follow-up activities or reasons for the delay in the case histories. We identified some cases with periods spanning several months after the cases were 180 calendar days old in which there was no activity noted in the case history or an explanation for the delay. In these overage cases, continual management oversight is needed to ensure more timely resolution of § 1203 violations and eliminate unnecessary stress to employees when cases are needlessly delayed.

We recommended the Chief Human Capital Officer formalize in the Internal Revenue Manual (IRM) the monthly requirement to conduct and document follow-up activity on all cases open for over 180 calendar days and perform annual follow-up reviews to ensure the process is consistently followed.

Management's Response: IRS management agreed with our recommendation and will include the recommended requirement in an IRM currently under development concerning the processing of conduct cases. Training is also planned to implement the requirement. Management's complete response to the draft report is included as Appendix VI.

Copies of this report are also being sent to the IRS managers affected by the report recommendation. Please contact me at (202) 622-6510 if you have questions or Michael R. Phillips, Assistant Inspector General for Audit (Wage and Investment Income Programs), at (202) 927-0597.

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Background

On July 22, 1998, the President signed into law the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98).¹ This Act added Title 26 United States Code Section (§) 7803 (d)(1)(A), requiring the Treasury Inspector General for Tax Administration (TIGTA) to annually report to the Congress any termination or mitigation under RRA 98 § 1203. Section 1203 provides the IRS Commissioner with the authority to terminate the employment of IRS employees for certain proven violations² committed in connection with the performance of their official duties. The IRS Commissioner also has the sole authority to determine whether mitigating factors exist that weigh against termination.

The TIGTA Office of Investigations (OI) is responsible for the initial investigation of all § 1203 allegations except those complaints related to the failure to file a tax return or the understatement of Federal tax liability identified through the Employee Tax Compliance (ETC) Branch or complaints related to discrimination (civil rights) identified through the Equal Employment Opportunity process. The TIGTA OI is generally responsible for § 1203 allegations related to employee false statements under oath, harassment, falsification of documents, assault or battery, confidentiality and disclosure of tax return information, or threat of examination.

After initially evaluating the allegations, the TIGTA OI has the option of opening an official investigation or referring the allegations to the IRS through the Employee Conduct and Compliance Office (ECCO). The ECCO verifies that all of the § 1203 allegations referred by the TIGTA OI are accounted for in the Executive Correspondence Management System (ECMS). The ECCO assesses these allegations through a fact-finding process and sends the results to the Board of Employee Professional Responsibility (BEPR). If the BEPR determines there were

¹ Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

² See Appendix V for an explanation of the acts and omissions requiring employee removal under RRA 98 § 1203 and a description of the § 1203 process.

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no § 1203 issues present in the allegation or the allegation did not rise to the level of a § 1203 violation, the BEPR will issue the employee either a “clearance,” a “closed without action,” or a “no investigation” letter. Clearance letters are issued when the BEPR cannot substantiate that a § 1203 violation occurred; closed without action and no investigation letters are issued for less clear situations. For allegations for which the BEPR determines a § 1203 violation may have occurred, the case is returned to the TIGTA OI for investigation. The IRS notifies the TIGTA OI of the results of these reviews and the final action taken. If notification is not received in 180 calendar days, the TIGTA OI sends a quarterly email to the IRS following up on the status of the outstanding overage allegations.

Once the TIGTA OI completes its review of a § 1203 allegation opened as an official investigation, a report of investigation is sent to the IRS. The ECCO reviews the reports of investigation for potential § 1203 violations and forwards those cases to the Human Capital Office Labor Relations offices. The Labor Relations Specialists use the Automated Labor and Employee Relations Tracking System (ALERTS) to track the § 1203 reports of investigation. The ALERTS tracks a wide range of labor activities that include investigations of IRS employee misconduct and other performance problems. The Labor Relations Specialists are tasked with assisting an employee’s manager in evaluating the alleged § 1203 violation(s). The IRS notifies the TIGTA OI of the results of the allegation reviews and the final actions taken.

Allegations relating to an employee’s failure to file a tax return or the understatement of an employee’s Federal tax liability are referred from the ETC Branch to the Labor Relations offices for investigation. The case files involving General Schedule (GS)-14 employees and below are sent to the jurisdictional Labor Relations Office for resolution. The ETC allegations involving a senior executive, a GS-15, or a senior manager pay band employee are forwarded directly to the Centralized Adjudication Branch (CAB) for review. The Labor Relations Specialist controls the ETC cases on the ALERTS and assists the employee’s local manager in determining whether the violation meets the § 1203 guidelines.

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When an allegation is substantiated as a § 1203 violation, the employee's second-line manager (Proposing Official) recommends removal in a letter to the employee. The employee then has the opportunity to provide a written or oral response. If after reviewing the circumstances of the case and the employee's response the next level manager (Deciding Official) agrees that the § 1203 violation was substantiated, the case is forwarded to the § 1203 Review Board.

The § 1203 Review Board is responsible for considering any mitigating circumstances in the case and either making a recommendation to the Commissioner for mitigation of the penalty or concluding that mitigation is not warranted. If mitigation is not warranted, the case is returned to the Labor Relations Office, where a removal letter is prepared and signed by the employee's manager. If mitigation is recommended, the § 1203 Review Board presents the case to the Commissioner for the final determination of whether the penalty against the employee can be either mitigated or upheld.

This review was performed at the IRS National Headquarters in Washington, D.C., in the Human Capital Office during the period February through July 2004. The audit was conducted in accordance with *Government Auditing Standards*. We focused our review on allegations referred by the TIGTA OI and the ETC Branch. We did not evaluate the controls over the CAB cases in this review. In addition, we did not evaluate TIGTA OI operations and controls or the accuracy of the IRS § 1203 determinations.

Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

The IRS process ensured allegations referred by the TIGTA OI were properly accounted for and timely addressed. The IRS controlled allegations on the ECMS, as appropriate, for the 33 allegations referred by the TIGTA OI between October 1, 2003, and December 31, 2003.

The IRS also notified the TIGTA OI of the results of its reviews of allegations and the actions taken on allegations referred. We were advised that, if the IRS notification was

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Treasury Inspector General for
Tax Administration Were
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not received in 180 calendar days, the TIGTA OI would send a quarterly email to the IRS following up on the status of the outstanding overage allegations. However, there were no overage § 1203 allegations listed at the time of our review.

During Calendar Year 2003, the IRS closed 75 allegations referred by the TIGTA OI. An analysis of the ECMS records indicates the staffs from the BEPR and the ECCO reviewed and closed these complaints, on average, within 60 calendar days.

**Reports of Investigation
Referred From the Treasury
Inspector General for Tax
Administration Were Properly
Controlled**

The IRS process ensured reports of investigation referred by the TIGTA OI were accounted for and addressed. The IRS controlled cases on the ALERTS, as appropriate, in the 51 reports of investigation that were referred between January 1, 2004, and March 31, 2004.

The IRS had also appropriately addressed the reports of investigation referred by the TIGTA OI. As of March 31, 2004, there were 11 reports of investigation open for over 180 calendar days without a resolution. Labor Relations Specialists should have followed up monthly on cases open on the ALERTS for over 180 calendar days. In 5 of the 11 cases, the ALERTS case histories indicated there was continual activity on the cases. However, in the remaining six case histories, the Labor Relations Specialists did not document specific follow-up activities. In these six cases, there were periods of inactivity spanning months without an explanation. If the requirement for reviewing cases over 180 calendar days and documenting those reviews had been implemented, it would have helped ensure cases with § 1203 violations were timely addressed.

An ALERTS analysis indicated that, during Calendar Year 2003, Labor Relations Specialists, with the assistance of the local managers, completed evaluating 184 reports of investigation with potential § 1203 violations. On average, it took 102 calendar days for Labor Relations Specialists working with local management to complete and close these cases on the ALERTS or forward them to the § 1203 Review Board for final review.

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**The Process Should Ensure
Cases Are Timely Considered
by the Section 1203 Review
Board**

The IRS process ensured allegations substantiated as § 1203 violations by local managers were forwarded to the § 1203 Review Board and accounted for properly. The § 1203 Review Board analysts controlled a total of 141 substantiated allegations referred by the Deciding Officials between January 1, 2003, and March 31, 2004. This included 126 ETC cases and 15 reports of investigation addressing other § 1203 violations.

During the first 5 months of Calendar Year 2003, the § 1203 Review Board met regularly to review substantiated § 1203 violations. However, for the 170-calendar day period between May 13, 2003, and October 30, 2003, the § 1203 Review Board only held 1 meeting.

The § 1203 Review Board's Charter required meetings to be called with a quorum, including the Chair and two members of the § 1203 Review Board, to process pending cases. Three voting members constituted a quorum. The § 1203 Review Board had a total of five members, including the Chair and four other permanent members. During Calendar Year 2003, three voting members of the § 1203 Review Board, including the Chair, retired or moved to another position, which made it impossible to have a quorum.

The delay in scheduling § 1203 Review Board meetings affected the timely review of substantiated § 1203 violations. In Calendar Year 2003, on average it took the § 1203 Review Board 87 calendar days to review the cases and make a final determination as to whether to make a recommendation to the Commissioner for mitigation or proceed with the employee's removal.

To select new members and prevent future delays in scheduling § 1203 Review Board meetings, a new § 1203 Review Board Charter was written in October 2003. The new charter designated the new § 1203 Review Board members and provided for alternate members when needed. The new § 1203 Review Board consisted of four members, including a Chair and three alternate members, and an alternate Chair. These revisions should ensure sufficient members to have a quorum.

In October 2003, the § 1203 Review Board began to meet on a regular basis. During the first quarter of Calendar

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Year 2004, the § 1203 Review Board, on average, was able to review pending cases and make the final determinations within 46 calendar days from the receipt date. This was a marked improvement over the average time of 87 calendar days it took the § 1203 Review Board to review a case in Calendar Year 2003.

The IRS has made a commitment to its employees to ensure:

- Fair and equitable treatment of taxpayers, taxpayer representatives, and employees consistent with § 1203.
- Alleged § 1203 violations are thoroughly reviewed and resolved promptly and properly.
- Existing procedures are used to resolve allegations that do not meet § 1203.

To meet this commitment, the § 1203 Review Board should continue to meet on a regular basis. The § 1203 Review Board plays a critical role for the Commissioner by timely examining all § 1203 cases in which a Deciding Official has made a determination that there is a § 1203 violation. We believe with the new § 1203 Review Board Charter expanding the number of available members, the § 1203 Review Board should be able to ensure the timely review of substantiated § 1203 violations. These changes should also help limit the effect future retirements and transfers could have on the § 1203 Review Board operations.

**Employee Tax Compliance
Allegation Controls Could Be
Enhanced**

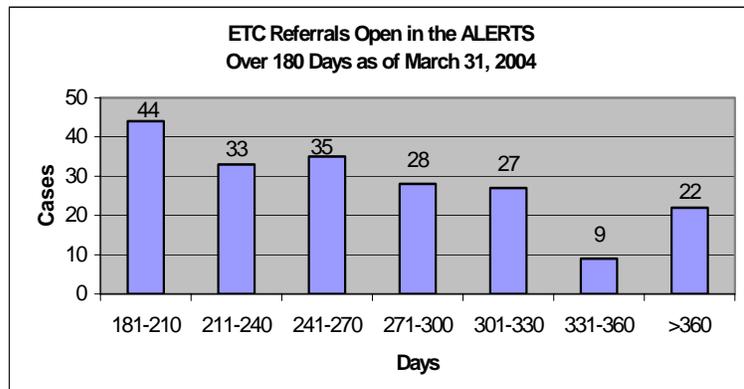
The IRS process ensured cases forwarded from the ETC Branch involving potential willful failure to file a tax return and understatement of Federal tax liability, both potential § 1203 violations, were controlled on the ALERTS. Our analysis of the ALERTS records indicated the IRS controlled 1,302 cases that, where appropriate, were forwarded by the ETC Branch between January 1, 2004, and March 31, 2004.

An analysis of the ALERTS records during Calendar Year 2003 indicated that local managers, with the assistance of the Labor Relations Specialists, completed evaluating the circumstances surrounding 4,454 referrals from the ETC

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Branch.³ On average, during Calendar Year 2003, it took 67 calendar days for Labor Relations Specialists to close these cases or forward the substantiated § 1203 violation cases to the § 1203 Review Board. During this period, there were 93 ETC referrals substantiated as § 1203 violations and forwarded to the § 1203 Review Board for consideration.

Each of the 3 Labor Relations Area Senior Consultants established a control to review all cases open over 180 calendar days and to report the status of those cases. As of March 31, 2004, there were 198 ETC referrals open in the ALERTS for over 180 calendar days, 22 of which were open for over 360 calendar days, without a resolution as to whether the tax compliance issue was a substantiated § 1203 violation.



Source: *The IRS ALERTS*.

In 11 of the 22 cases, the Labor Relations Specialists did not document their follow-up activities or reasons for the delay in the case histories. In 8 of these 11 cases, there were periods of unexplained delays after the cases reached 180 calendar days old. One of the 8 cases showed no activity for nearly 2 years. In the remaining 11 cases, although there were no follow-up activities documented, there were notations in the ALERTS case histories that might justify the long delays. For example, there were cases in which the employee was on military leave or had health issues, but the related period was not specifically identified.

³ This analysis included referrals made during Calendar Years 2002 and 2003.

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Our analysis indicated that each of the 3 Area Offices had cases over 360 calendar days old.

The monthly review of all § 1203 cases over 180 calendar days old is not a formal Internal Revenue Manual requirement. While less than 3 percent of cases fall into the over 180-calendar day category, there is still a need to identify and resolve delays in processing these cases. We believe continual management oversight is needed to ensure Labor Relations Specialists perform monthly follow-up reviews on all cases over 180 calendar days old. This will ensure more timely resolution of § 1203 violations and eliminate unnecessary stress to employees in instances in which cases are needlessly delayed.

Recommendation

1. The Chief Human Capital Officer should formalize in the Internal Revenue Manual the monthly requirement to conduct and document follow-up activity on all cases over 180 calendar days old and perform annual follow-up reviews to ensure the process is consistently followed.

Management's Response: Management agreed and will include the recommended requirement in an Internal Revenue Manual currently under development concerning the processing of conduct cases. Training is also planned to implement the requirement.

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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the Internal Revenue Service (IRS) process ensured the IRS Restructuring and Reform Act of 1998 (RRA 98) Section (§) 1203¹ allegations referred for action and management responses were accounted for and addressed. Specifically, we focused our review on § 1203 cases referred by the Treasury Inspector General for Tax Administration (TIGTA) and the Employee Tax Compliance (ETC) Branch. If the alleged issue involved a senior executive, a General Schedule 15, or a senior manager pay band employee, the related allegations were forwarded directly to the Centralized Adjudication Branch (CAB) for review. Due to time constraints, we did not evaluate the controls over the CAB cases in this audit. In addition, this review did not evaluate TIGTA Office of Investigations (OI) operations or controls or the accuracy of the IRS § 1203 determinations.

To accomplish our objective, we:

- I. Evaluated whether the IRS process accounted for and addressed § 1203 allegations referred by the TIGTA OI.
 - A. To determine whether cases were accounted for, traced the allegations from the TIGTA Performance and Results Information System (PARIS)² that were forwarded during the period October 1, 2003, through December 31, 2003, to the IRS Executive Correspondence Management System (ECMS) database. We followed up on any cases not recorded to determine whether the omissions were appropriate.
 - B. To determine whether the IRS monitored the TIGTA's 180-day listing for appropriate action, evaluated the actions taken by the IRS in response to the last TIGTA listing of the cases open for 180 days or more.
 - C. To establish the average length of time it took the IRS to resolve the TIGTA § 1203 allegations during Calendar Year 2003, used the data in the ECMS to calculate the average time and lapsed time between when the IRS received the complaint and when the case was closed on the ECMS database.
- II. Evaluated whether the IRS process accounted for and addressed referrals from the ETC Branch.

¹ Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

² The PARIS is the TIGTA OI case management system.

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- A. To determine whether all of the ETC cases were adequately accounted for, obtained an extract from the ETC database for the period January 1, 2003, through March 31, 2004, of cases forwarded for resolution and traced the cases for the period January 1, 2004, through March 31, 2004, to the Automated Labor and Employee Relations Tracking System (ALERTS) to verify whether all of the ETC cases were accounted for.
 - B. To determine the average length of time it took the IRS to resolve the ETC allegations, researched existing criteria regarding the timing of § 1203 case processing and, using the data in the ALERTS for Calendar Years 2002 and 2003, calculated the average lapsed time from when the case was received until the case was closed or sent to the § 1203 Review Board.
 - C. To establish if the § 1203 ETC allegation cases opened over 180 calendar days past the date of referral were monitored for appropriate action, obtained a listing of ETC allegations from the ALERTS data that were open over 180 days past the date of referral as of March 31, 2004, and determined whether the IRS took any specific actions to identify and address those cases.
- III. Evaluated whether the IRS process accounted for and addressed the § 1203 reports of investigation sent by the TIGTA for resolution.
- A. To determine whether the IRS process adequately accounted for the TIGTA § 1203 reports of investigation, obtained a PARIS extract of the § 1203 reports of investigation forwarded to the IRS during the period January 1, 2004, through March 31, 2004, and verified whether those referred by the TIGTA were accounted for in the ALERTS.
 - B. To determine the average length of time it took the IRS to resolve the TIGTA reports of investigation, researched existing criteria regarding the timing of § 1203 case processing and, using the data in the ALERTS for Calendar Years 2002 and 2003, calculated the average time and lapsed time from when the case was received until when the case was closed or sent to the § 1203 Review Board for final review.
 - C. To establish whether the § 1203 reports of investigation open over 180 calendar days past the date of first referral were monitored for appropriate action, obtained a listing of reports of investigation from the ALERTS data that were still open over 180 calendar days past the date of referral as of March 31, 2004, and determined whether the IRS took any specific actions to identify and address those cases.
- IV. Determined whether the § 1203 cases forwarded to the § 1203 Review Board for adjudication were accounted for and addressed.

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- A. To determine whether the cases forwarded to the § 1203 Review Board were properly controlled, obtained an ALERTS extract of the § 1203 cases forwarded to the § 1203 Review Board from the Labor Relations Office during the period January 1, 2003, through March 31, 2004, and verified whether these cases were accounted for in the § 1203 Review Board tracking system.
- B. To determine the length of time it took to adjudicate the closed cases submitted during Calendar Years 2003 and 2004, calculated the overall time the case spent at the § 1203 Review Board until a final decision was made to recommend removal or mitigation. We interviewed key § 1203 Review Board staff to determine the methodology used to work the § 1203 Review Board's cases. If delays exceeding 60 calendar days were identified in processing individual cases at the § 1203 Review Board, we followed up to determine the cause and effect of the delay.

Note: In performing this audit, we used the TIGTA OI PARIS data and the IRS ECMS, ETC, and ALERTS data to perform the queries needed to accomplish the above steps. We did not determine whether the PARIS, ETC, ECMS, or ALERTS data provided were complete. Data validation was limited to reviewing the data to extract the records used in our review. We compared the records contained in the PARIS and the ETC data file to the records controlled in the ALERTS and the ECMS extract.

Major Contributors to This Report

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Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Deputy Commissioner for Operations Support OS
Chief, Agency-Wide Shared Services OS:A
Director, Workforce Relations OS:HC:R
Director, Employee Conduct and Compliance Office OS:HC:R:EC
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Management Controls OS:CFO:AR:M
Audit Liaison: Chief Human Capital Officer OS:HC

Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective action will have on tax administration. This benefit will be incorporated into our Semiannual Report to the Congress.

Type and Value of Outcome Measure:

- Protection of Resources – Potential; 198 Employee Tax Compliance (ETC) cases affected (see page 6).

Methodology Used to Measure the Reported Benefit:

From the population of ETC referrals received during Calendar Years 2002 and 2003, we identified 198 ETC cases open on the Automated Labor and Employee Relations Tracking System that were over 180 days old as of March 31, 2004. We then performed a detailed review of 22 of the 198 cases that had remained open for more than 360 days as of March 31, 2004.

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Appendix V

The Section 1203 Process

On July 22, 1998, the President signed into law the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98).¹ This Act added Title 26 United States Code Section (§) 7803 (d)(1)(A), requiring the Treasury Inspector General for Tax Administration (TIGTA) to annually report to the Congress any termination or mitigation under RRA 98 § 1203. Section 1203 provides the IRS Commissioner with the authority to terminate the employment of IRS employees for certain proven violations committed in connection with the performance of their official duties. The IRS Commissioner also has the authority to determine whether mitigating factors exist that weigh against termination.

The § 1203 violations reported in the TIGTA Semiannual Report to the Congress are comprised of 10 possible acts or omissions as described under the RRA 98. If there is a final determination an IRS employee committed an act or omission, as described below, in the performance of the employee's official duties, that employee shall be removed for cause based on charges of misconduct.

The acts or omissions that may subject an IRS employee to removal are:

1. Willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets.
2. Providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative.
3. With respect to a taxpayer, taxpayer representative, or other employee of the IRS, the violation of:
 - A. Any right under the Constitution of the United States.
 - B. Any civil right established under:
 - i. Title VI or VII of the Civil Rights Act of 1964.²
 - ii. Title IX of the Education Amendments of 1972.³
 - iii. The Age Discrimination in Employment Act of 1967.⁴

¹ Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

² Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 2 U.S.C., 28 U.S.C., and 42 U.S.C.).

³ 20 U.S.C.A. §§ 1681-1688 (West Supp. 2003).

⁴ 29 U.S.C. §§ 621-634 (2000).

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- iv. The Age Discrimination Act of 1975.⁵
 - v. Section 501 or 504 of the Rehabilitation Act of 1973.⁶
 - vi. Title I of the Americans With Disabilities Act of 1990.⁷
4. Falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative.
 5. Assault or battery on a taxpayer, taxpayer representative, or other employee of the IRS, but only if there is a criminal conviction or a final judgment by a court in a civil case, with respect to the assault or battery.
 6. Violations of the Internal Revenue Code of 1986, Department of the Treasury regulations, or policies of the IRS (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer, taxpayer representative, or other employee of the IRS.
 7. Willful misuse of the provisions of § 6103 of the Internal Revenue Code of 1986 for the purpose of concealing information from a Congressional inquiry.
 8. Willful failure to file any return of tax required under the Internal Revenue Code of 1986 on or before the date prescribed (including any extensions), unless such failure is due to reasonable cause and not to willful neglect.
 9. Willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not to willful neglect.
 10. Threatening to examine a taxpayer for the purpose of extracting personal gain or benefit.

In the TIGTA's March 2004 Semiannual Report to the Congress, of the 207 § 1203 complaints substantiated, 98 percent related to the willful failure of an employee to file a tax return or the willful understatement of his or her Federal tax liability. The other reported complaints violated one of the other forbidden acts or omissions.

All § 1203 allegations related to the acts or omissions outlined above, except those complaints related to the failure to file a tax return or the understatement of Federal tax liability identified through the Employee Tax Compliance (ETC) Branch or complaints related to discrimination (civil rights) identified through the Equal Employment Opportunity process, are received and initially evaluated by the TIGTA Office of Investigations (OI) Office of Operations or through the individual OI field offices. The TIGTA OI receives allegations through a variety of media (telephone, email, fax, mail, referral from the IRS, etc.). These § 1203 allegations generally relate to employee false statements under oath, harassment, falsification of documents, assault or

⁵ Pub. L. No. 94-135, title III, Sec. 301, 89 Stat. 728 (codified in 42 U.S.C.).

⁶ Pub. L. No. 93-112, 87 Stat. 355 (codified as amended in scattered sections of 15 U.S.C., 20 U.S.C., 29 U.S.C., 36 U.S.C., 41 U.S.C., and 42 U.S.C.).

⁷ 42 U.S.C. §§ 12101-12213 (2000).

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battery, confidentiality and disclosure of return information, or threat of examination. If the TIGTA believes a possible § 1203 violation occurred, it will open an investigation. If the allegation is unclear as to whether a § 1203 violation occurred, the TIGTA OI will forward the allegation to the Employee Conduct and Compliance Office (ECCO) on a complaint referral.

The allegations sent to the ECCO are tracked on the Executive Correspondence Management System and further evaluated to assess if the allegation has § 1203 merit. ECCO analysts who are assigned the § 1203 allegations conduct fact-finding and return their analysis and findings/recommendations to the Board of Employee Professional Responsibility (BEPR). All § 1203 allegations except the tax compliance issues and cases identified by the Discrimination Complaint Review Unit are reviewed by the BEPR. If the BEPR determines that no § 1203 violation occurred, a “clearance” letter is issued. “Closed without action” and “no investigation” letters are issued for allegations that are less clear, such as when the complainant failed to allege which constitutional or civil right was violated. However, if the BEPR determines that an allegation may be a § 1203 violation, the allegation is returned to the TIGTA OI for investigation.

When a clearance letter is issued, the allegation and resulting action are recorded on the Automated Labor and Employee Relations Tracking System (ALERTS). However, if the allegation is closed without action or a no investigation letter is issued, the case is not entered in the ALERTS. However, the ECCO provides the TIGTA OI the results of the allegation reviews and the final action taken on each case. If notification is not received in 180 calendar days, the TIGTA OI Office of Operations sends a quarterly email to the BEPR following up on the status of the outstanding overage § 1203 allegations.

Once the TIGTA OI completes its investigation of a § 1203 allegation opened as an official case, a report of investigation is sent to the IRS through the IRS Centralized Investigation Receipt and Control Unit (CIRCU). Information on the TIGTA reports of investigation is electronically downloaded to the ALERTS. The CIRCU controls and forwards the TIGTA reports of investigation and allegations (the case files) to the ECCO. The Director of the ECCO clears unsubstantiated § 1203 cases by issuing clearance letters. If a case was not cleared, the ECCO reviews the report of investigation and returns the case file to the CIRCU to forward to the servicing Labor Relations Office for resolution.

Likewise, the allegations referred from the ETC Branch for failure to file a tax return or understatement of an employee’s tax liability are electronically downloaded and tracked on the ALERTS. Cases involving General Schedule (GS)-14 employees and below are sent to the servicing Labor Relations office for resolution of the outstanding tax matter.⁸

Once a Labor Relations office receives the TIGTA reports of investigation and the ETC cases determined to have § 1203 merit, the Labor Relations Specialists control the cases and assist

⁸ If the alleged issue involves a senior executive, a GS-15, or a senior manager pay band employee, the related allegations are forwarded directly to Centralized Adjudication Branch for review. We did not evaluate these cases in this audit.

Restructuring and Reform Act of 1998
Section 1203 Allegations Were Properly Controlled

local IRS management in resolving the § 1203 allegations against their employees. The Labor Relations Specialists use the ALERTS to track and document § 1203 cases resulting from the TIGTA reports of investigation and the ETC referrals. The Labor Relations Specialists gather the information needed about an employee's willfulness and intent from the fact-finding conducted by the employee's manager and evaluate the § 1203 allegation by consulting with the Area Labor Relations Senior Consultant. The result is a determination as to whether the violation meets the § 1203 guidelines. When it is agreed that a violation did occur and the § 1203 allegation is substantiated, the Proposing Official (the employee's second-line manager) recommends removal in a letter to the employee. The employee has the opportunity to provide a written or oral response, which is reviewed by the Deciding Official (the employee's third-line manager). The case file including the employee's response is referred to the § 1203 Review Board.

The § 1203 Review Board has two purposes: (1) to ensure consistency in reviewing cases in which the allegations have been substantiated on § 1203 cases and removal is proposed and (2) to make appropriate recommendations of other disciplinary actions on § 1203 cases with mitigating circumstances to the Commissioner. As such, the § 1203 Review Board reviews the allegation, the report of investigation, and the employee's statement and considers any mitigating circumstances. The § 1203 Review Board then either makes a recommendation to the Commissioner to mitigate the penalty or decides to remove the employee. The § 1203 Review Board's decision to remove the employee is outlined in a memorandum signed by the § 1203 Review Board members, which is sent to the servicing Labor Relations Office where a removal letter to the employee is prepared and signed by the employee's manager. If mitigation is recommended, the § 1203 Review Board presents the case to the Commissioner, who either agrees with the Board's recommendation or determines another appropriate action based on the circumstance of the case, the employee's prior history of misconduct, etc. The Commissioner signs a memorandum outlining his or her decision, which is sent to the servicing Labor Relations Office where a letter outlining the Commissioner's decision is prepared and signed by the employee's manager and sent to the employee.

**Restructuring and Reform Act of 1998
Section 1203 Allegations Were Properly Controlled**

Appendix VI

Management's Response to the Draft Report



CHIEF
HUMAN CAPITAL OFFICER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

RECEIVED
SEP 15 2004

SEP 14 2004

MEMORANDUM FOR ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Beverly Ortega Babers *BOB*,
Chief Human Capital Officer

SUBJECT: Formal Draft Audit Report – Restructuring and Reform Act of
1998 Section 1203 Allegations Were Properly Controlled
(Audit # 200440040)

Thank you for the opportunity to respond to your report -- *Restructuring and Reform Act of 1998 Section 1203 Allegations Were Properly Controlled*.

I have reviewed the formal draft audit report, focusing in particular on the discussion and recommendation concerning overage Employee Tax Compliance cases. As you recommend, the Human Capital Office will formalize the monthly requirement in the Internal Revenue Manual to conduct and document follow-up activity on all Section 1203 cases. Attached is a detailed response outlining the corrective actions that the Human Capital Office will take to address your recommendation.

If you have any questions please contact Vincent Gudewich, Associate Director, LR/ER Policy Office at (202) 622-8757.

Attachment

Restructuring and Reform Act of 1998
Section 1203 Allegations Were Properly Controlled

Attachment

IDENTITY OF RECOMMENDATIONS/FINDINGS:

Recommendation

The Chief Human Capital Officer should formalize the monthly requirement in the Internal Revenue Manual to conduct and document follow-up activity on all cases over 180 calendar days and perform annual follow-up reviews to ensure the process is consistently followed.

Finding 1: Allegations Referred from the Treasury Inspector General for Tax Administration Were properly Controlled. Agree.

Finding 2: Reports of Investigation Referred from the Treasury Inspector General for Tax Administration Were Properly Controlled. Agree.

Finding 3: The Process Should Ensure That Cases Are Timely Considered by the Section 1203 Review Board. Agree. The recommendation addresses the issue that cases are timely considered.

Finding 4: Employee Tax Compliance Allegation Controls Could Be Enhanced. Agree. The recommendation addresses the issue of properly controlling the cases in ALERTS.

CORRECTIVE ACTION(S):

This requirement will be included in an IRM currently under development concerning the processing of conduct cases and will be issued no later than December 30, 2005. Training is also planned to implement this requirement.

IMPLEMENTATION DATE:

PROPOSED DATE: December 30, 2005

RESPONSIBLE OFFICIAL:

Vincent Gudewich, Associate Director, LR/ER Policy Office

CORRECTIVE ACTION MONITORING PLAN:

The IRM is currently under development and a draft is planned to be circulated for comment to the labor relations community by January 30, 2005. We will continue to conduct monthly reviews of all cases over 180 days old and take necessary action as warranted.